

## TEXT OF PROPOSED REGULATIONS

### TITLE 3. CALIFORNIA CODE OF REGULATIONS DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS CHAPTER 1. PESTICIDE REGULATORY PROGRAM SUBCHAPTER 3. AGRICULTURAL COMMISSIONER PENALTIES ARTICLE 1. GUIDELINES

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Current wording is indicated by regular type.

Originally proposed deletions are indicated by ~~strikeout~~.

Originally proposed additions are indicated by underline.

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Adopt section 6128 to read:

#### **6128. Enforcement Response.**

(a) The commissioner shall comply with the provisions of this section each time a violation(s) occurs to determine the appropriate enforcement response.

(b) For purposes of this section, the following terms are defined as follows:

"Compliance action" is an action that documents that certain behavior or an act is in violation of the law or regulations. The documentation may or may not actually accuse the respondent of having committed the behavior or act in question. Compliance actions do not directly impose a monetary penalty or loss of a right or privilege. Compliance actions include violation notice; warning letter; documented compliance interview; or noncompliance noted on an inspection form. Compliance actions also include public protection actions such as cease and desist orders; seize or hold product or produce orders; and prohibit harvest orders.

"Decision report" is an official explanation and record of a commissioner decision, but is not an action in and of itself.

"Enforcement action" is an action with the potential to impose a monetary penalty or loss of a right or privilege initiated by a Notice of Proposed Action. Enforcement actions include administrative civil penalty; or disciplinary action (refuse, suspend, or revoke) against a county registration, certificate, or permit.

(c) In addition to determining the violation class specified in section 6130, the commissioner shall respond to each violation with one of the following enforcement responses listed below as appropriate to that violation class.

(1) Class A Violation Enforcement Response.

(A) A formal referral to the District Attorney, City Attorney, or Circuit Prosecutor, or referral to the Director for a statewide licensing action or Attorney General action; or

(B) An enforcement action.

(2) Class B Violation Enforcement Response.

(A) A formal referral to the District Attorney, City Attorney, or Circuit Prosecutor, or referral to the Director for a statewide licensing action or Attorney General action; or

(B) An enforcement action; and/or

(C) A compliance action with a decision report, provided there has not been a compliance action for a violation in the same class within two years of the current alleged violation. In some instances, a compliance action may be taken in addition to the enforcement response in (2)(A) or (B), in which case a decision report is not required.

(3) Class C Violation Enforcement Response.

(A) An enforcement action; and/or

(B) A compliance action with a decision report when there has been a compliance action for a violation in the same class within two years of the current alleged violation; or

(C) A compliance action without a decision report, provided there has not been a compliance action for a violation in the same class within two years of the current alleged violation.

(d) If a decision report specified in subsections (c)(2)(C) and (c)(3)(B) is required, the commissioner shall submit the decision report to the Director, within 30 days of the date of the compliance action, for concurrence. If the Director does not concur with the commissioner's decision, an enforcement action shall be taken. The commissioner shall retain a copy of the decision report for two years. A decision report shall contain:

(1) The identification of the respondent or case;

(2) Description of the incident;

(3) Section or sections violated;

(4) What violation class pursuant to section 6130;

(5) Basis for not taking an enforcement action;

(6) Date of decision; and

(7) Signature of the Agency official responsible for the decision.

(e) In the case of a priority investigation, as defined in the 2005 Cooperative Agreement or subsequent modifications to that agreement between the California Department of Pesticide Regulation, the California Agricultural Commissioners and Sealers Association, and the U.S. Environmental Protection Agency, Region IX, the commissioner shall provide an opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to participate in the investigation and/or pursue a civil or criminal action when a violation may have occurred.

NOTE: Authority cited: Sections 11456, 12781, 12976, and 15203, Food and Agricultural Code. Reference: Sections 11892, 12996, 12997, 12999.5, and 15202, Food and Agricultural Code.

Amend section 6130 to read:

**6130. Civil Penalty Actions by Commissioners.**

(a) When taking civil penalty action pursuant to section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount.

(1) For purposes of this ~~section~~ article, violations shall be designated as "Class A," "Class B," and "Class C."

(A) Class A: Violations which created an actual health or environmental hazard, violations of a lawful order of the commissioner issued pursuant to sections 11737, 11737.5, 11896, or 11897 of the Food and Agricultural Code, or violations that are repeat Class B violations. The fine range for Class A violations is \$700-\$5,000.

(B) Class B: Violations which posed a reasonable possibility of creating a health or environmental effect or violations that are repeat Class C violations. The fine range for Class B violations is \$250-\$1,000.

(C) Class C: Violations that are not defined in either Class A or Class B. The fine range for Class C violations is \$50-\$400.

(2) ~~The currently alleged A violation shall be considered classified as a repeat violation, if the it occurs within two years of a violation for which following criteria are met:~~

~~(A) The person against whom the a civil penalty was levied in the same county and of the same class. action is proposed had a prior violation that was, or would have been, in the same class. as the currently alleged violation; and~~

~~(B) A civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.~~

(3) The person charged with a violation(s) shall be notified of the proposed fine action, including the amount of the proposed fine(s). When a penalty is proposed resulting in a repeat violation, the Notice of Proposed Action shall identify the prior violation and the record of the proceedings shall include a copy of the decision regarding that prior violation. The commissioner shall send a copy of the notice to the department at the same time the notice is provided to the person charged with a violation(s).

(4) If the person against whom the commissioner levied a fine requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the commissioner's decision to the Director.

(5) The Department, on at least an annual basis, shall inform commissioners of violations for which fines have been levied.

(b) When acting pursuant to Food and Agricultural Code section 12999.5 or Business and Professions Code section 8617, an agricultural commissioner may bring an action against an employed person who failed to utilize personal protective equipment or other safety equipment as required by section 6702(c) provided the commissioner determines that all of the following conditions are met:

(1) The employed person is licensed or certified pursuant to Chapter 14, Division 3, of the Business and Professions Code; Chapters 5 or 8, Division 6, of the Food and Agricultural Code; or Chapters 3.4 or 3.6, Division 7, of the Food and Agricultural Code;

(2) The employer provided the equipment to the licensee or certificate holder and the equipment was available at the work site in a condition that would have provided the safety or protection intended by the equipment;

(3) The employer, through its written workplace disciplinary action policy, required the licensee or certificate holder to utilize the equipment;

(4) The employer has complied with applicable training requirements of this Division prior to the time the licensee or certificate holder failed to utilize the equipment;

(5) The employer supervised the licensee or certificate holder to assure that the equipment was properly used by the licensee; and

(6) At the time of the licensee's or certificate holder's failure to utilize the equipment, the licensee or certificate holder has knowledge of the discipline that could be imposed under the employer's written workplace disciplinary action policy for failure to utilize the equipment.

NOTE: Authority cited: Sections 12781, 12976, 12981 and 15203, Food and Agricultural Code. Reference: Sections 11892, 12973, 12997, 12999.5, and 15202, Food and Agricultural Code.